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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,506	02/26/2004	David Wender	04635/000N066-US0	7427
7278	7590	01/23/2009		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER TINKLER, MURIEL S	
			ART UNIT 3691	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/788,506	<b>Applicant(s)</b> WENDER, DAVID	
	<b>Examiner</b> MURIEL TINKLER	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/25/2008</u>  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This application has been reviewed. Claims 1-34 were previously pending. Claims 1, 2, 8, 12, 13, 16, 17, 20, 23, 24, 25, 27-32 and 34 are amended. Claim 35 has been added. Therefore, claims 1-35 are pending. The rejection(s) and objection(s) are as follows.

#### ***Response to Amendment***

1. The amendment filed October 22, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: A first and second option 'free of buy/sell indicators'; and, accepting a selection of a sequence of boxes and providing, for the selected sequence, a determined type of option spread.

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection. The remaining standing amendment teaches, "wherein the determined type of option spread defines at least a combination of buy/sell indicators". The Examiner discloses that any spread result, as disclosed in the cited prior art, discloses a combination of buy/sell indicators, see paragraph 783 of Lange.

***Claim Rejections - 35 USC § 112***

**35 USC 112, 1<sup>st</sup> paragraph**

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 12, 20 and 23 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. A first and second option 'free of buy/sell indicators' critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The specification clearly discloses that: the first option consists of buy/sell indicators on page 6 (lines 5-6), "first option from a input device comprising an optioncode, a contract, a strike, and a callput"; and, that the second option consists of buy/sell indicators on page 6 (lines 8-9), "a second option from an input device comprising an optioncode, a contract, a strike, and a callput". The definition of a strike is also defined in the specification as, "the price at which the holder of an option may exercise the right to buy or sell the underlying asset", on page 2 (lines 15-16).
5. Additionally, claim 23 changes the terms selecting and receiving to accepting a selection of and providing respectively. The term 'accepting a selection of' is used to replace selecting. The newly added amendment implies that a selection was already made and is accepted. This limitation was not disclosed in the specification. Finally,

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the term providing was used to replace the term receiving, which was defined in the specification. Providing an option spread is not disclosed in the specification.

35 USC 112, 2<sup>nd</sup> paragraph

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 6, 7, 13, 16, 17, 23, 25, 27, 28, 31 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 2, 6, 7, 13, 16, 17, 27, 28, 31 and 32 provides for the use of 'valuation', but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

9. Claims 2, 6, 7, 13, 16, 17, 27, 28, 31 and 32 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

10. In these instances, the term has replaced the work 'price'. The Examiner will assume the Applicant is referring to the 'value' of the spread. While the specification

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does mention the word 'value', it is unclear if the Applicant is referring to the current value or future value. Also, if the Applicant is referring to a future value, it is unclear which point in the future this 'valuation' takes place. Appropriate correction is required.

11. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner points out that the term 'presenting' a set of grids is not defined in the specification and is used to replace the term viewing, which is defined in the specification. Finally, the specification does disclose an act of displaying a set of grids. The Examiner will interpret the word 'presenting' to mean 'displaying' as disclosed in the specification on page 7 (lines 8-10).

6. Claim 25, recites the term "calculating at least one of a calculated". It is unclear how something that is already calculated needs to be calculated again. Additionally, the specification does not disclose how this is possible.

### ***Claim Rejections - 35 USC § 101***

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claim 35 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is not patent eligible subject matter because the claimed invention is directed to a judicial exception to 35 U.S.C. 101 (i.e., an abstract idea, natural phenomenon, or law of nature) and is not directed to a practical application of such judicial exception (e.g., because the claim

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does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible result). In this case, the system consists of a memory, a processor and computer executable instructions.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-35 rejected under 35 U.S.C. 102(b) as being anticipated by Lange (US 2002/0147670), hereafter referred to as Lange.

16. Regarding claims 1, 11, 12, 19, 20, 33-35, Lange discloses: offering a digital option spread in paragraph 797; that option selling is common place and well known in the art in paragraph 803; and determining the type of option spread based on comparing a first option spread to a second option spread (that defines a combination of buy/sell indicators) in paragraph 783.

17. Regarding claims 2 and 13, Lange discloses the calculation of an option spread in paragraph 806.

18. Regarding claims 3 and 14, Lange discloses naming an option spread (binary/digital options) in paragraph 33.

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19. Regarding claims 4, 5, 15 and 25, Lange discloses the use of sensitivity analysis calculations in paragraph 745 and 866.

20. Regarding claims 6 and 16, Lange discloses the act of displaying the price and name in figure 2 (elements 100, 160, 170, 190 and 200).

21. Regarding claims 7-9 and 17, Lange discloses sending information to the display device in figure 6.

22. Regarding claim 10 and 18, Lange discloses an input device in figure 2 (element 240).

23. Regarding claims 21 and 26, Lange discloses a display with an x and y axis in figure 6 (element 503).

24. Regarding claim 22, Lange discloses: the use of real-time in paragraph 44 and varying time periods in paragraph 110; and, the use of software in paragraphs 748, 817 and 996.

25. Regarding claim 24, Lange discloses the act of receiving a positive or negative change in quantity in paragraphs 623 and 758.

26. Regarding claim 27, Lange discloses saving an option spread to a watch list (HTML interface) in figure 6.

27. Regarding claims 31 and 32, Lange discloses that market based hedging is well known in the art in paragraph 11 and the use of hedging with respect to stock price in paragraph 216.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MURIEL TINKLER whose telephone number is (571)272-7976. The examiner can normally be reached on Monday through Friday from 6:30 AM until 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./  
Examiner, Art Unit 3691

/Hani M. Kazimi/  
Primary Examiner, Art Unit 3691